

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No. S – 35 of 2021

Date	Order with Signature of Hon'ble Judge
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For hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application

22.02.2021

Mr. Shamsuddin Rajper Advocate for the Applicant/accused
Mr. Shafi Muhammad Mahar, DPG for the State

ORDER

Aftab Ahmed Gorar, J: By way of instant Criminal Bail Application, the applicant/accused Khair Jan S/o Ali Madad Brohi, has sought for post-arrest bail in case arising out of FIR No.182 of 2020 registered under sections 402 and 399 PPC at Police Station Padiddan, District Naushahro Feroze

2. The facts of the prosecution case, briefly stated are that on 24.11.2020 SIP Bakhshal Khan lodged the FIR stating therein that during patrolling when they reached at Banana Orchard of one Qaimuddin on the link road leading from Padiddan to Darya Khan, all of sudden six armed persons came on the road assuming the government vehicle as a private and gave signal to stop, they were identified to be Rizwan Shar, Sajid alias Sajjan alias Karo Odho, Samandar Chandio, Babar Sheikh and Khair Jan Brohi, having Repeaters, on hearing about the police, they escaped away by taking advantage of darkness. The police party chased the culprits which vanished at some distance, hence the FIR was registered.

3. The applicant/accused preferred post-arrest bail application before the trial Court, which was dismissed vide order dated 05.01.2021, hence

the applicant seeks the same from this Court by way of instant bail application u/s 497 Cr.P.C.

4. It is contended by learned counsel for the applicant/accused that he is innocent and has falsely been implicated by the police; that this is a night time incident and identity on the light of vehicle is a weak piece of evidence; that the allegations are general in nature against the applicant/accused; that prior to this incident the applicant was under wrongful confinement of the police, whereas, one relative of the applicant/accused has filed Criminal Miscellaneous Application No.404/2020 before the Sessions Judge, Naushahro Feroze; that nothing has been recovered from the exclusive possession of the applicant/accused; that there is no such previous criminal record of the applicant/accused; that the guilt of the applicant/accused requires further inquiry.

5. Learned DPG for the State prayed for dismissal of the bail application by contending that one robbed Car was recovered from the possession of the applicant/accused; that there are so many criminal cases registered against him; that there is no material to show that there was any previous enmity between the applicant/accused and the police.

6. I have heard the arguments of the learned counsel for the applicant/accused, learned DPG for the State and perused the record. It appears from the record that the applicant/accused is the resident of Balochistan Province, whereas, the incident had taken place in District Naushahro Feroze in Province of Sindh in the odd hours of the night and identity has been shown on the light of vehicle which is a weak piece of evidence. The complainant has identified the applicant/accused along with five other accused with their name and parentage in the night time on the light of vehicle, therefore, the possibility of mistaken of identity cannot be overlooked. The Section 399 deals with preparation for committing dacoity while Section 402 PPC deal with assembling for purpose of committing

dacoity. The applicability of the above cited sections of law is yet to be determined during trial after recording evidence. In such a situation, the applicant/accused has made-out a case of further inquiry entitling the applicant/accused to grant of bail within the meaning of sub-section 2 of Section 497 Cr.P.C.

7. In view of above, the instant bail application is allowed, the applicant/accused is admitted to post-arrest bail subject to his furnishing surety in sum of **Rs.100000/- (One lac)** and PR bond in the like amount to the satisfaction of learned trial Court. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

Judge

ARBROHI